

HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. V. SEETHAPATHY

Writ Appeal Nos. 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, and, 662 of 2006

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W.A. 568 of 2006

Between:

The State Election Commission,

Rep. by its Secretary and others ... Appellants

And

N. Sekhar and others

... Respondents

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::JUDGMENT::

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Counsel for the appellants: Advocate General for the State and other officers

Sri Nuty Rama Mohana Rao for State
Election Commission

Counsel for private respondents: Shri S. Ramachandra Rao, Senior Advocate with
K. R. Prabhakar, and Sarvasri P.
Venugopal, M.V. Durga Prasad, T. Surya
Karan Reddy, Naresh Byrapaneni, Raja
Ram with M. Subba Reddy, I. Koti Reddy,
K.G.K. Prasad, Smt.D. Radha Rani, V. Sri
Ranga Rao, Kanakamedala Ravindra

Kumar, Dammalapati Srinivas, Taddi
Nageswara Rao, G.V. Shivaji,
Smt.Chandana Madala, and
Venkateswarlu Posani

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June 09, 2006

Per G.S. Singhvi, CJ

These appeals are directed against order dated 1-6-2006 passed by the learned Single Judge in Writ Petition No.10574 of 2006 and batch whereby he directed the Commissioner of Panchayat Raj to undertake an exhaustive review of the reorganization of Mandal Parishad Territorial Constituencies (MPTCs.) in various Mandals in the State and also directed the State Election Commissioner (for short 'the SEC') to ensure that sanctity of the voters list published in February 2006 is maintained and examine whether deletions or additions of names subsequent to the publication of list in February 2006 has been made after following the procedure prescribed under Sections 21 and 22 of the Representation of People Act, 1950 (for short 'the R.P. Act'). For the sake of convenient reference, the directions given by the learned Single Judge are extracted below:

“The Commissioner of Panchayat Raj shall undertake an exhaustive review of the reorganization of MPTCs in various Mandals in the State and take necessary steps to ensure that—

- a. where the number of MPTCs in a Mandal remains unaltered, the existing set up is not disturbed;
- b. where the number of MPTCs in a Mandal has increased on account of rise in population, the reorganization of the MPTCs must be such that the MPTCs where the highest growth of population has been recorded are reorganized and the others are not touched;

- c. no village which is not contiguous to other villages in an MPTC are allotted or attached to it, i.e., Territorial contiguity must be ensure; and
- d. perfect balance is maintained as regards the number of villages in each MPTC in the Mandal.

If such exercise warrants any rearrangement or reorganization of MPTCs, it shall be open to the Commissioner to issue necessary directions before the election notification is issued. The complaints and representations received in this regard shall be taken into account. Necessary instructions shall also be issued to the District Collectors.

The State Election Commissioner shall issue necessary directions to the District Collectors as well as the Electoral Registration Officers in the State:

- a. to ensure the sanctity of the voter's list published in February 2006 is maintained in the matter of utilizing the same for the Panchayat Raj Elections;
- b. to ascertain whether the deletion or addition of names subsequent to the publication of the list in February 2006 is preceded by necessary exercise contemplated under Sections 21 and 22 of the R.P.Act, by undertaking proper verification;
- c. to bestow specific attention to situations where large scale additions and deletions of voters has taken place in the list published under Rule 5 of A.P. Panchayat Raj (Preparation and Publication of Electoral Rolls) Rules, 2000 contained in G.O.Ms.No.254 dt.4-8-2000. It shall be open to the aggrieved individuals as well as the public representatives to bring the instances of deletions and inclusions to the notice of the concerned Electoral Registration Officers, who in turn shall undertake proper exercise before a final list is published under Rule 6.

The exercise indicated above shall be undertaken expeditiously and completed before the Election Notification is issued.”

The background in which the learned Single Judge gave the aforementioned directions may be noticed first.

On 27-9-2005, the State Election Commission (hereinafter described as ‘the State Commission’) issued Press Note No.1424/SEC-F1/2005 and notified the order passed by the Election Commission of India for summary revision of assembly electoral rolls with reference to 1-1-2006 as qualifying date and called upon the

political parties and general public to check the assembly electoral rolls and make necessary claims/objections for inclusion and deletion by indicating that the same will be used as mother rolls for preparation of electoral rolls for Panchayat Raj Elections to be held in 2006. The relevant extracts of the Press Note are reproduced below:

“The Election Commission of India ordered special summary revision of assembly electoral rolls with reference to 1-1-2006 as qualifying date. The following schedule was given for the revision process.

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| 1. Draft publications of rolls on - | 20-10-2005
(Thursday) |
| 2. Period for filing claims and objections and reading of relevant part/section of electoral roll in gram sabha/urban local bodies and resident welfare association meetings etc. - | 20-10-2005
(Thursday) to 19-11-2005
(Saturday) |
| 3. Special campaign dates for receiving claims and objections at all designated locations - | 29-10-2005
(Saturday)30-10-2005 (Sunday)12-11-2005
(Saturday)13-11-2005 (Sunday) |
| 4. Disposal of claims and objections by - | 22-12-2005
(Thursday) |
| 5. Preparation and printing of supplements and additions, deletions and corrections by - | 20-1-2006
(Friday) |
| 6. Final publication of electoral rolls on - | 24-1-2006
(Tuesday) |

As per the provisions of the Acts governing local bodies, the wardwise electoral rolls thereof are prepared before each ordinary and casual election **duly adopting the latest assembly electoral rolls as mother rolls.**

There is no provision in Acts governing local bodies for suo motu inclusion or deletion of names in the electoral roll of local bodies. However, any inclusion

or deletion ordered by the Electoral Registration Officer of the Assembly Constituency concerned under Sections 22 and 23 of the R.P. Act, 1950 up to the date of election notification of any local body shall only be carried out in the electoral roll of the local body concerned.

The ordinary elections to mandal parishads, zilla parishads and gram panchayats are scheduled to be held during the middle of the year 2006 as the term of the existing bodies will be completed in July/August, 2006. The Assembly electoral rolls now prepared and published by the ECI with reference to 1-1-2006 as qualifying date are to be adopted as mother rolls for preparation of electoral rolls for election to panchayat raj bodies.

During the recent elections to municipal bodies, some of the political parties complained that there were discrepancies in the wardwise electoral rolls of the municipal bodies and that sufficient time was not given for eligible persons to enroll themselves in the assembly electoral roll and consequently the same deficiencies also got reflected in the local body electoral roll.

Therefore, the State Election Commission hereby appeals to all the political parties and general public to check the Assembly electoral rolls that are undergoing special revision as per the above schedule issued by the Election Commission of India with reference to 1-1-2006 as qualifying date and make necessary claims and objections for inclusion and deletion wherever necessary as these latest rolls will be used as mother rolls for preparation of electoral rolls for panchayat raj elections due to be held in the year 2006.”

The Secretary of the State Commission sent letter dated 24-10-2005 to the State Presidents and General Secretaries of all recognized and registered political parties to motivate the public to file necessary claims and objections for inclusion and deletion of names.

After about seven months, the State Commission, in exercise of the powers conferred upon it under Article 243-K of the Constitution of India read with Section 11 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short ‘the Panchayat Act’) and the Andhra Pradesh Panchayat Raj (Preparation and Publication of Electoral Rolls) Rules, 2000 (for short ‘the Rules’) directed all the District Panchayat Officers in the State to prepare and publish on 8-5-2006 the electoral rolls of all the Gram Panchayats in their respective districts with reference to 1-1-2006 as the qualifying date by duly indicating the ward revision as required under Rule 5 of the Rules in Form-I thereof. This was followed by Press Note dated 12-5-2006 issued by the Secretary of the State Commission, the relevant extracts of which are reproduced below:

“The electoral rolls of all gram panchayats in the State have been prepared in accordance with the provisions of Section 11 of Andhra Pradesh Panchayat Raj Act, 1994 and Andhra Pradesh Panchayat Raj (Preparation and publication of electoral rolls) Rules, 2000 issued thereunder by adopting the existing entries in the relevant part of latest Assembly Electoral Rolls (with reference to 1-1-2006 as qualifying date) and were published by the District Panchayat Officers concerned in the respective gram panchayats on 08-5-2006. These electoral rolls will be utilized in the forthcoming elections to Panchayat Raj Bodies.

The above said provisions do not provide for direct inclusion or deletion of any name from the panchayat electoral rolls. Any person who wishes to lodge any claim for inclusion of his/her name or any objection to the inclusion of a name or any objection to the particulars in any entry in the gram panchayat electoral roll, shall first get such claim or objection settled with reference to corresponding entry in the electoral roll of the Assembly Constituency concerned by lodging suitable claim or objection under the provisions of Representation of People Act, 1950, and the Registration of Electors Rules, 1960, made thereunder before the Electoral Registration Officer of the Assembly Constituency concerned. Such claims and objections can be lodged with either Electoral Registration Officer (Revenue Divisional Officer) or Assistant Electoral Registration Officer (Mandal Revenue Officer concerned).

All orders of inclusions, deletions or corrections in the electoral rolls of the Assembly Constituency issued on the basis of such claims and objections by the Electoral Registration Officer till the date of issue of election notification for the Panchayat Raj Body concerned will be duly carried out in the electoral roll of the gram panchayat concerned. The general public and political parties are requested to avail this opportunity to verify the electoral rolls of the gram panchayats and take remedial action as explained above.”

On 16-5-2006, the State Commission, by taking cognizance of the complaint received from the general public and political parties that electoral roll prepared and published for the Gram Panchayat Elections contain certain deviations from the entries found in the electoral roll of the Assembly Constituency, directed the Collectors to ensure that the entries in the electoral roll of the Assembly Constituency are truly and correctly reflected in the electoral roll published for the concerned gram panchayat. This was reiterated vide letter No.194/SEC-B2/2006 dated 22-5-2006 issued by the Secretary of the State Commission. After four days, the State Commission issued Press Note stating therein that the general public and political parties were asked to verify the Gram Panchayat electoral roll and take remedial action wherever necessary and reiterated that the State Commission

cannot on its own include or exclude names from the electoral roll and the same has to be done in accordance with the provisions of the R.P. Act. Simultaneously it was indicated that any inclusion or exclusion effected in the Assembly electoral roll till the date of election notification for Panchayat Raj Bodies will be carried out in the Panchayat Raj electoral rolls. This is evinced from the last paragraph of the Press Note, which is reproduced below:

“The State Election Commission wants to reiterate that by itself under the law it cannot either include or exclude names from the electoral roll. It is for the concerned public to file applications in accordance with the law under the R.P. Act, 1950 and have their names included/excluded in the Assembly electoral rolls in the first instance and thereafter alone the names can be included/excluded in panchayat electoral rolls. To enable this, the State Election ordered publication of the electoral roll on 08-05-2006 itself leaving ample time to the general public and political parties to see that applications are filed within time for inclusions and exclusions. The State Election Commission has therefore done everything necessary, alerted the political parties, general public and issued strict instructions to the Collectors in this regard. Any inclusions and exclusions effected in the Assembly electoral roll till the date of election notification for Panchayat Raj bodies will be carried out in the Panchayat electoral rolls.”

(Emphasis added)

Between 23rd May and 29th May, 2006, a large number of petitions were filed questioning the electoral rolls published for the forthcoming Panchayat Raj Elections as also for determination of the MPTCs. For the sake of convenient reference, we have taken the facts from Writ Petition No.10965 of 2006 filed by Sri N. Sekhar and Writ Petition No.10530 of 2006 filed by Sri K. Veeranjanyulu. In his petition, Sri N. Sekhar prayed for grant of a declaration that the action of the respondents to delete the names of eligible voters while refusing to exclude the names of ineligible voters from the voters list of Nadendla Mandal, Nadendla Gram Panchayat is illegal. He also sought a declaration that failure of the authorities not to pass orders on the appeals preferred by the affected parties is illegal, unjust, discriminatory and violative of Article 14 of the Constitution as also the provisions of the Panchayat Act and the Rules. He further prayed for issue of a mandamus to the respondents to include the names of eligible voters and exclude those of ineligible voters from the voters list of Nadendla Gram Panchayat before issuing election notification. He also filed an application for issue of a direction to the respondents to

undertake revision of electoral roll and not to notify the election till that exercise is completed.

Sri K. Veeranjanyulu and others filed writ petitions questioning the action of the respondents to determine MPTCs. by alleging that the respondents have arbitrarily excluded certain territories and included some other territories in the MPTCs. and all this has been done with the sole object of favouring the candidates of the party in power. They have averred that the exercise undertaken by the Commissioner of Panchayat Raj and officers subordinate to him is contrary to Section 150 of the Panchayat Act and Andhra Pradesh Panchayat Raj (Division of Mandal into Constituencies) Rules, 1994 (hereinafter described as 'Mandal Constituencies Rules'). The petitioners have further averred that the boundaries of the existing MPTCs. have been changed in a most arbitrary manner ignoring the criteria specified in Rule 3 of the Mandal Constituencies Rules and in complete disregard of the 'rule of contiguity'. In some cases, panchayats situated at a distance of 10 to 12 kms. have been made part of the particular Mandal Constituencies and area of the adjacent panchayats have been excluded.

In the writ petition filed by him, which stands registered as Writ Petition No.10530 of 2006, Sri K. Veeranjanyulu has averred that 16 Mandal Territorial Constituencies were carved out of Parchur Mandal of Prakasam District in accordance with the provisions of Section 268 (11) read with Section 150 of the Act and guidelines issued vide Memo dated 3-1-1995. However, in the garb of undertaking fresh exercise for the ongoing elections, some of the villages have been arbitrarily deleted from Devarapalli MPTC. This is particularly done in respect of villages of Bodawada and Ch.B. Palem. According to him, Bodawada has been added to Parchur-III MPTC without any reason or rhyme and, therefore, the respondents should be restrained from holding election on the basis of the revised MPTCs.

In some of the petitions, it has been alleged that the MPTCs have been changed/reconstituted/reorganized at the instance of the Members of the Legislative Assembly and other politically influential people belonging to the ruling party.

The learned Single Judge, after hearing arguments, posted the writ petitions

for admission on 19-6-2006 and passed the interim order, the relevant portions of which have been extracted above.

The learned Advocate General and Sri Nuty Ram Mohana Rao, Advocate appearing for the State Commission assailed the impugned order and argued that without recording a specific finding on the tenability of the plea taken by the writ petitioners that the voters list published by the District Panchayat Officers and the exercise undertaken for determination/re-determination of MPTCs. are patently illegal, arbitrary and violative of the provisions contained in the Act and various Rules, the learned Single Judge could not have given omnibus and general interim directions virtually stultifying the impending election, which is bound to be held before the end of five years term of the panchayat bodies, as per the mandate of Article 243-E (1) of the Constitution. Both the learned counsel took us through different portions of the order under challenge to show that without recording any finding on the legality or otherwise of the electoral rolls or determination of the MPTCs., the learned Single Judge passed the impugned order. The learned Advocate General emphasized that the order under challenge does not contain consideration of the factual matrix of any particular case and the learned Single Judge passed omnibus directions, which are legally unsustainable. Learned Advocate General pointed out that in furtherance of Memo No.1418/Election and Rules/82/2006-4 dated 27-4-2006 issued by the government for determining the number of MPTCs., with reference to the 2001 census, the Collectors of various districts have, after considering and disposing of as many as 968 objections, determined 16,161 MPTCs., and, if illegalities or aberrations are ultimately established in one or more cases, then the Court may direct holding of fresh election for such constituency, but there could be no justification for issue of an interim direction for overall review of the constitution and reorganization of all the MPTCs. in the State. Sri Nuty Ram Mohana Rao submitted that by virtue of Section 11 of the Act, the electoral rolls prepared for Assembly Constituencies in accordance with the provisions of the R.P. Act are made basis for holding elections to the Gram Panchayats etc. and no revision can be made by the State authorities unless deletion or addition is made by following the procedure prescribed under that Act. He emphasized that the petitioners have not questioned the vires of Section 11 of the Act and the Rules and argued that without challenging the vires of Section 11 and the Rules, they cannot question the electoral rolls notified for the forthcoming election. At the end of his submissions, the learned Advocate General made a

statement that all those persons who have filed objections under the R.P. Act for inclusion or exclusion of names from the electoral roll of any particular panchayat and succeeded in persuading the competent authority to accept their claims, the changes will be taken into consideration and eligible persons will be allowed to cast votes provided that such an order is passed by the competent authority before the date of issue of election notification.

Sri S. Ramachandra Rao, Senior Advocate assisted by Sri K. R.Prabhakar and Sarvasri P. Venugopal, M.V. Durga Prasad, T. Suryakaran Reddy, Naresh Byrapaneni, M. Subba Reddy, I. Koti Reddy, V. Sri Ranga Rao, Kanakamedha Ravindra Kumar, Dammalapati SRinivas, TAddi Nageswara Rao, G.V. Shivaji, Smt.Chandana Madala, Smt.D. Radha Rani and Venkateswarlu Posani strongly pleaded for not upsetting the directions given by the learned Single Judge by arguing that the State Commission, the Commissioner of Panchayat Raj and officers subordinate to them have committed grave illegalities in the preparation of electoral rolls and determination of MPTCs.

Sri S. Ramachandra Rao referred to Article 243-K of the Constitution and Sections 11, 12 and 201 of the Panchayat Act and argued that the entrustment of the authority to the District Panchayat Officers to prepare the electoral rolls is a complete negation of the power of supervision and control which vests in the State Commission by virtue of Article 243-K of the Constitution and Section 201 of the Panchayat Act. Learned counsel submitted that Rule 5 of the Rules, which provide for printing and publication of electoral rolls by the District Panchayat Officer, and Rule 6, which provide for correction of the electoral rolls by the District Panchayat Officer, are violative of the concept of supervision and control of the State Commission. He referred to G.O.Ms.No.879, PR, RD & R Department (Elections-I) Department, dated 3-12-1994, G.O.Ms.No.898, PR, RD & R (Elections-I) Department, dated 10-12-1994, G.O.Ms.No.913, PR, RD & R (Elections-I) Department, dated 21-12-1994 and G.O.Ms.No.923, PR, RD & R Department, dated 28-12-1994 and argued that the repeal of the provision for lodging of objections against the electoral roll, determination thereof by the Electoral Registration Officer and lodging of appeal has completely denuded the State Commission of its authority under Section 201 of the Panchayat Act. Learned counsel emphasized that there is no provision in the Rules for preparation of draft or final rolls and, thus, the aggrieved persons are deprived of their legitimate right to object to the arbitrary exclusion or inclusion of the names of

eligible/ineligible persons in the electoral rolls. Sri Rao then argued that the determination of MPTCs. is required to be done strictly in accordance with the provisions of Rule 3 of the Territorial Constituencies Rules and the learned Single Judge did not commit any error by directing the Commissioner of Panchayat Raj to undertake an exhaustive review of the re-organisation of MPTCs. in various Mandals of the State. In support of his submissions Sri Rao also filed written arguments.

Other learned counsel appearing for the respondents in these appeals largely adopted the arguments of the learned Senior Counsel Sri S. Ramachandra Rao and submitted that the respondents should not be allowed to conduct elections on the basis of patently illegal electoral rolls and contumacious exercise undertaken for constitution, determination and re-determination of MPTCs. Learned counsel referred to the facts of individual cases to show that the names of a number of electors were arbitrarily excluded from the rolls of the Assembly Constituency and the objection submitted by the writ petitioners have not been considered. They argued that grave irregularities have been committed in determination of MPTCs. and all this has been done with a view to facilitate the elections of the candidates to be set up by the ruling party. Counsel appearing for the petitioner in Writ Petition No.10871 of 2006 pointed out that all the petitioners are members of backward class, but their category has not been indicated in the voters list and, on that account, they will be deprived of their right to contest election as members of reserved category. Sri Raja Ram, Advocate appearing for the petitioner in Writ Petition No.10006 of 2006 pointed out that the population criteria has been altogether overlooked in re-determining MPTCs. He pointed out that one of the village panchayats has been arbitrarily deleted from the existing MPTC and argued that this has been done with the sole object of favouring the candidate of the ruling party. Sri G. V. Shivaji, Advocate appearing for the respondent in W.A. (SR) No.59761 of 2006 argued that 'rule of contiguity' has been violated while determining the MPTCs. and even the approval of the Commissioner of Panchayat Raj has not been obtained. Sri Kanakamedala Ravindra Kumar, Advocate appearing for the respondent in W.A. (SR) No.58808 of 2006 argued that the existing constituency has been divided and a village as far away as 12 kms. has been made a part of the new MPTC. Sri M.V. Durga Prasad appearing for some of the respondents pointed out that the respondents in W.A.(SR) No.58790 of 2006, who are elected representatives of the public had filed objections against arbitrary

constitution of the MPTCs., but their plea has not been considered. Sri Durga Prasad then argued that the representation made for preparation of electoral rolls as per the rolls of Assembly Constituencies have also been overlooked. Sri K.G.K. Prasad and Smt.D. Radha Rani, counsel appearing for respondent in W.A. (SR) No.59609 of 2006 argued that names of Upa-Sarpanch and his wife have been arbitrarily deleted from the electoral roll and thus they would be deprived of their legitimate right to elect the candidate of their choice. Sri Venkateswarlu Posani, Advocate appearing for the respondent in W.A. (SR) No.58820 of 2006 argued that the objections raised by the petitioner against the arbitrary reorganization of the MPTC have not been considered.

We have given serious thought to the respective arguments and also gone through the written submissions filed by Sri S. Ramachandra Rao. Before advertizing to the arguments of the learned counsel for the parties, we consider it imperative to observe that ordinarily the High Courts are extremely loath to pass interim orders and thereby interfere with the process of elections by exercising jurisdiction under Article 226 of the Constitution. Insofar as the Panchayats and Municipalities are concerned, there is a constitutional embargo (Articles 243-O and 243-ZG) against the entertaining of challenge to the election except by way of election petition. Time and again, the Supreme Court has adversely commented on the interlocutory judicial intervention by the High Court in the process of election. It has also been consistently held that except in rare cases, the High Court should not interfere with the result of election and leave the aggrieved person to avail remedy by filing election petition. In **Boddula Krishnaiah v. State Election Commissioner**, the Supreme Court over-ruled the objection as regards the maintainability of the writ petition involving challenge to the election, but observed that the High Court would not be justified in interfering with the election process by recording the following observations:

“Once an election process has been set in motion, though the High Court may entertain or may have already entertained a writ petition, it would not be justified in interfering with the election process giving direction to the election officer to stall the proceedings or to conduct the election process afresh, in particular when election has already been held in which the voters were allegedly prevented from exercising their franchise. The present dispute is covered by an election dispute and remedy is thus available at law for

redressal. Under these circumstances, we hold that the order passed by the High Court is not correct in law in giving direction not to declare the result of the election or to conduct fresh poll for 20 persons, though the writ petition is maintainable. The High Court, pending writ petition, would not be justified in issuing direction to stall the election process. However, this order will not preclude any candidate including defeated candidate from canvassing the correctness of the election. They are free, as held earlier, to seek remedy by way of an election petition as provided in the Act and the Rules.”

In **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra**, the Supreme Court approved the consistent view of the Bombay High Court that in exercise of the power under Article 226, the High Court will not tinker with the process of election. Some of the observations made in that judgment are reproduced below:

“If the contention of the appellants is that there was a breach of rule or certain mandatory provisions of the Rules were not complied with while preparing the electoral roll, the same could be challenged under Rule 81(d)(iv) of the Rules by means of an election petition. In view that the preparation of electoral roll is part of the election process and if there is any breach of the Rules in preparing the electoral roll, the same can be called in question after the declaration of the result of the election by means of an election petition before the Tribunal.

In view of the finding that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of the returned candidate, if aggrieved, by means of an election petition before the Election Tribunal.

The same view has been reiterated in a rather short order passed in **Vadodara Distt. Coop. Sugarcane Producers’ Union Ltd. v. Chandrakantbhai Thakorebhai Patel**. Paragraphs 6 and 7 of that order are reproduced below:

“6. The elections of the Managing Committee required to be held as per Chapter XI-A of the Gujarat Cooperative Societies Act, 1961 were in progress. In a writ petition laying challenge to the legality of certain steps taken by Respondents 2 and 3 for the purpose of holding the elections, the High Court interfered with the election process midway, allowed the writ

petition and set aside the election programme and all steps taken in accordance therewith. The order of the High Court was passed on 7-4-2005, while the elections were scheduled to be held on 17-4-2005. The aggrieved Respondent 3 in the High Court has filed this appeal by special leave.

7. Having heard the learned counsel for the parties, we are satisfied that the High Court ought not to have stayed the process of election midway. We feel that the writ petition should have been heard on merits but without staying the process of election and that would have met the ends of justice.”

Having noticed some of the judicial precedents in which the Supreme Court has ruled against interlocutory judicial intervention in the matters of preparation of electoral roll etc., we may now advert to the order under challenge. A careful reading thereof shows that after briefly taking note of the arguments advanced on behalf of the writ petitioners and the learned Advocate General as also counsel appearing for some of the private respondents, and adverting to the provisions of Section 150 of the Panchayat Act and Rule 3 of the Territorial Constituencies Rules, the learned Single Judge made certain general observations and proceeded to direct exhaustive review of the reorganization of MPTCs. The general observations made by the learned Single Judge read as under:

“From a perusal of Section 150 and Rule 3, it is evident that population is taken as the criterion for division of Mandals into constituencies and the number of constituencies is to be arrived at by dividing the population of the Mandal by 3500. Since it is not possible to carve out the MPTCs. with mathematical precision, comprising of population of exactly 3500, the Section and Rules give latitude to the authorities in the matter of division of constituencies. Each constituency so divided, is required to comprise of the population between 3000 and 4000. Even for this, certain relaxation is provided, where the circumstances warrant.

Neither the Act nor the Rules prescribe any distinct procedure in the matter of reconstitution or reorganization of constituencies. In fact, they are silent about it. However, the power to reconstitute can be inferred, given the existence of circumstances, warranting such an exercise.

Basically reorganization is warranted, only where there is substantial increase in the population in the Mandal, at least by 3500. If, on account of the increase in the population, the number of MPTCs in a Mandal is increased, the reorganization must be undertaken in such a way, as not to disturb the entire original arrangement, but to focus the attention to such existing constituencies which have recorded a relatively higher increase in the population.

As pointed out by the learned Advocate General, the exercise is purely

administrative in nature and no individual can claim any vested right to insist that the rearrangement of the MPTCs must be in a particular manner. At the same time, the State cannot be conceded the power, to undertake such an exercise, accordingly to its ipsi dixit, giving a go-bye to all prescribed norms. Using of expressions like “as far as practicable”, at several places, in Rule 3 of the Rules, is more a gesture, to relieve the concerned authorities from the rigor of adherence to mathematical precision than to relieve them of the requirement under the Rule altogether. A decent balance needs to be maintained in such cases.

For instance, when the Rule requires that geographical contiguity and viability of administrative development shall be maintained, the expression “as far as practicable”, cannot be used as a tool, to carve out a MPTC by picking out villages, spread in various places in the Mandal; separated by villages, which are part of other MPTCs. Same thing can be said about the number of villages in each MPTC. When the provisions mandate that the MPTC must not have more than three villages, the authorities cannot have the liberty to carve out one constituency with five villages and another with one or two villages.

Having regard to the limited information that is available with the Court at this stage, it is difficult to record any finding, that any irregularity, as such, has taken place it would naturally require the pleadings from the respondent and appreciation of the matter, in detail, to record such findings. This process would obviously take sometime. However, since the elections are impending, this court does not find it proper, either to interdict the elections, or to refuse to take the grievances of the petitioners in to account. If elections are held by the time the writ petitions are taken up for hearing, or detailed consideration thereof, they are likely become infructuous. Keeping in view the principle and being conscious of the fact that this Court can neither discharge the functions of an authority under the Act, nor can sit as an Appellate Authority over the decisions taken by such authorities, necessary measures need to be indicated.”

The learned Single Judge then took cognizance of the writ petitioners’ challenge to the electoral rolls and observed:

“It needs to be observed that existence of an accurate and perfect electoral roll is the actual bedrock of any democratic institution. If the electoral roll is defective, it would have the corresponding effect upon the whole process. If a citizen, who is otherwise entitled to be included in the voters’ list, is excluded, he stands kept outside the process, for no fault of him. On the other hand, if an ineligible person is included in the voters’ list, it tells upon the weakness of the system. The beneficiary of such an imperfect exercise, if at all, would only have a feeling of disrespect for the system, than having any regard for it. It is for this reason, that the Parliament had prescribed detailed procedure in the

matter of preparation and updating the electoral roll, and the A.P. State Legislature has adopted the same for the purpose of conducting the elections to the various Panchayat Raj Institutions.

In several writ petitions, allegations are made to the effect that large scale deletion of names from the electoral list was undertaken between the publications of the voters' list in the month of February 2006, under the R.P. Act. And publication of the list by the District Panchayat Raj Officers, in the recent past. It is also alleged that names of hundreds of persons were added to such lists, in similar manner in contravention of the prescribed procedure. The voters' list for Gollapudi Village of Kankipadu Assembly Constituency is cited as an example. The voters' list was updated and published on 13-2-2006 as required under the R.P. Act. The first voters' by name, Subba Rao Aluri. His house number is shown as 1-3-1. The number of electoral identity card were indicated. However, in the list published by the District Panchayat Officer on 8-5-2006, as many as 454 voters were added, above the name of Subba Rao Aluri. For as many as 27 voters, neither any house number, nor any photo identity card number is furnished. The house numbers in the rest of the voters who were added, do not accord with the recognized pattern. This list had an independent column, to reflect the number of the voters in the Assembly Voters List. The pattern of these names is also not uniform. Though no definite finding can be recorded on such large scale additions, the matters needs attention of the concerned authorities. Several instances of large scale inclusion and deletion of names are cited.

Learned Advocate General submits that the relevant Rules provides for submission of appeals by the effected parties and the appeals preferred by the aggrieved parties are being considered by the concerned authorities in accordance with law. One aspect, which needs to be taken into account, in this regard, is that large scale deletion from and addition in the voters' list, apart from resulting in denial or conferment of right to vote on the respective individuals, would have its own effect on the outcome of the elections, particularly where the number of voters is limited. That, in turn, would effect upon in the transparency in the process.

Article 243-K of the Constitution of India and Section 201 of the A.P. Panchayat Raj Act confer absolute and exclusive power upon the State Election Commissioner to supervise and control the election in the Panchayat Raj Institutions. The said provisions confer power upon the State Election Commissioner to issue necessary directions to District Collector, or any other Officer, or Servant, of the State Government or Panchayat Raj Institutions. In this regard, preparation of electoral rolls for conduction of elections is separately dealt with, under sub-section (2) of Section 201 of the Act. Such power is coupled with the duty to ensure that no illegality takes place. The correctness or lacks of it, in any electoral roll, become squarely attributable to the Election Commission who is conferred with absolute powers, under the

provisions of the Constitution of India and the A.P. Panchayat Raj Act.”
(underlining is ours)

The above extracted portion of the order of the learned Single Judge shows that the directions impugned in these appeals were passed by the learned Single Judge without reference to the factual matrix or specific datas of any particular case except to one case relating to electoral rolls. Not only this, the learned Single Judge did not record a finding that the electoral rolls published on 8-5-2006 and determination/re-determination of MPTCs. suffer from any patent illegality or grave irregularity affecting the entire election process. The learned Single Judge did not refer to the facts of the individual cases and came to the conclusion that the averments contained in the particular writ petition are sufficient to substantiate the charge of manipulative exercise undertaken by the officers of the State for helping the candidates likely to be put up by the ruling party. Rather, the learned Single Judge expressed his inability to record any specific finding of irregularity having been committed and observed that the same would require detailed consideration of the pleadings and other records.

In our considered view, without undertaking an exercise for scrutiny of the facts of the individual cases, the allegations contained in the writ petitions and without recording a finding on the issue of existence of a strong prima facie case in the context of alleged irregularities in the preparation of electoral rolls or determination/re-determination of MPTCs., the learned Single Judge ought not to have passed general directions for review of reorganization of all the MPTCs. in various Mandals in the State and giving of fresh opportunity for submission of objections in the matter of deletion and inclusion of the names on the electoral rolls. To put it differently, the direction given by the learned Single Judge suffers from fundamental error i.e., non-consideration of the factual matrix of the cases, the allegations contained in the affidavits filed by the writ petitioners and their tenability and total lack of consideration of the parameters which must be borne in mind before interlocutory judicial intervention can be made in the matter of preparation of electoral rolls and determination/re-determination of MPTCs.

While directing an exhaustive review of reorganization of the MPTCs., the learned Single Judge completely lost sight of the fact that after considering 968 objections submitted by various persons, the concerned Collectors/competent authorities

accepted 341 of them, rejected the remaining 627 and then the list of 16,161 MPTCs. were published. Even if the Court was to feel convinced that some patent illegality/irregularity has been committed in determination of the MPTCs., of any particular Mandal, then an interim order could have been passed qua that Mandal, but no general and omnibus direction could have been given for revision of the entire exercise for reorganization of MPTCs. throughout the State of Andhra Pradesh.

The learned Single Judge also ignored the fact that the State Commission had repeatedly asked the registered and recognized political parties and individuals to file applications to lodge claims and objections for correction of the electoral rolls for filing applications under the R.P. Act and made it clear that all orders of inclusions, deletions or corrections in the electoral rolls of the Assembly Constituencies made by the Electoral Registration Officers till the date of issue of election notification for the Panchayat Raj Bodies will be duly carried out in the electoral roll of the Gram Panchayat concerned. In the face of this, the learned Single Judge was not at all justified in giving further opportunity for filing objections because that would result in putting a big question mark on the sanctity of the electoral rolls.

The argument of Sri S. Ramachandra Rao that the electoral rolls have been prepared in violation of the concept of supervision and control which vests with the State Commission appears attractive in the first blush, but lacks merit and is liable to be rejected. The petitioners have neither pleaded that Section 11 of the Panchayat Act and the Rules are ultra vires to Article 243-E of the Constitution and, on that account, the same are liable to be struck down nor counsel appearing for any of the petitioners made any argument to that effect. Therefore, there is no gainsaying that the electoral roll for the Gram Panchayats etc., has to be prepared on the basis of the electoral rolls of the Assembly Constituency published under the R.P. Act and any revision etc., can be made only on the basis of order passed by the Electoral Registration Officer of the concerned Legislative Constituency. If the scheme of Section 11 is examined in conjunction with the provisions of the Rules, we are unable to agree with Sri S. Ramachandra Rao that the electoral rolls on the basis of which elections are proposed to be held should be declared as nullity.

As a sequel to the above discussion, we hold that the order under challenge is liable to be set aside with the direction that the prayer made by writ petitioners for grant of interim relief be considered afresh after giving opportunity to the appellants to file

counter-affidavits.

Hence, the appeals are allowed. The order of the learned Single Judge is set aside. In order to facilitate early consideration of the prayer of the writ petitioners, we direct that –

1. the respondents in the writ petition should file counter-affidavits latest by 13-6-2006 after supplying advanced copies to the counsel for the petitioners.
2. the petitioners shall be free to file rejoinder affidavits, if any, on or before 15-6-2006.
3. All the writ petitions be listed before the Single Bench on 16-6-2006.
4. The Single Bench shall be free to hear the arguments on the main petitions and decide the same.
5. The petitioners shall also be at liberty to make a request for adjudication of their prayer for stay.
6. By way of abundant caution, it is clarified that the order passed in these appeals shall not operate as an impediment in the consideration of the writ petitioners' prayer for stay. At the same time, we make it clear that the respondents shall be free to take all legally permissible objections to the grant of interim relief.

While disposing of the appeals in the manner indicated above, we deem it proper to recapitulate the statement of the learned Advocate General that all those who have filed objections against the wrongful deletion of their names from the voters list and have succeeded in persuading the competent authority to accept their plea, shall be entitled to cast their vote in the forthcoming elections irrespective of the fact that their names are not reflected in the electoral roll. However, it is made clear that this direction would be operative qua the orders passed till the date of notification of election and not thereafter.

On the oral request made by the learned counsel for the petitioners, we

clarify that the elections, if any, held before the final adjudication of the writ petitions would be subject to the result of the writ petitions.

G.S. SINGHVI, CJ

G. V. SEETHAPATHY, J

June 09, 2006

SVS